

<b>UNITED STATES OF AMERICA</b>	)	
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	)	
<b>v.</b>	)	<b>CRIMINAL NO. 01-03-B-S</b>
	)	
<b>MARQUIS A. CRAIG,</b>	)	
	)	
<b>Defendant</b>	)	

This matter is before the Court on defendant Marquis Craig's motion to suppress statements made during custodial interrogation. Craig alleges that any statements he made to the police were involuntary and must be suppressed because the interrogating officers compelled him to speak by means of threats and deception. Craig alleges that the statements he made were the product of impermissibly coercive police conduct under the totality of the circumstances. An evidentiary hearing was held before me on June 25, 2001. I now recommend that the court adopt the following proposed findings of fact and **DENY** the motion to suppress.

On November 27, 2000, an armed robbery occurred at the Budget Host Hotel in Waterville, Maine. A short time thereafter a motor vehicle containing five occupants was stopped in the Central Maine area. Four of the occupants were arrested and charged in connection with the armed robbery; one fled the scene. Ultimately, the police identified the fleeing suspect as Marquis Craig and learned that he most likely could be found at 7

Fox Court in Portland, Maine. Armed with arrest and search warrants, the Special Reaction Team (“SRT”) of the Portland Police Department descended upon two apartments, numbers 407 and 408, at 7 Fox Court.

Prior to the arrival of the SRT, a Portland police officer had the apartment building under surveillance and observed an unidentified person go up onto the roof of the building. When the officers were unable to locate Craig in either apartment, they concluded that he was the person who had been seen climbing from a fourth floor window onto the roof. Craig was observed hiding behind a chimney stack on the rooftop and was confronted by an officer armed with a machine gun. The officer was able to positively identify Craig because he had a photo identification that accompanied the arrest warrant.

Craig did not cooperate with the officer and behaved in a belligerent and combative fashion. Rather than submit to arrest in accordance with the officer’s verbal commands, Craig jumped from the roof onto the fourth floor level of the fire escape. Craig kept yelling at the officers to shoot him and made gestures as though he were reaching for something in his waistband. The officers did not view his actions as suicidal gestures, but rather they saw it as bravado and aggressive behavior. Craig was not sobbing, weeping or otherwise acting suicidal. Rather he threatened to “take out” any police officer who tried to apprehend him. The officers noted that if Craig had been truly suicidal, a ready alternative presented itself because he could have jumped from the top of the fourth floor building at any time. The officers attempted to incapacitate Craig with pepper spray, but their efforts were unsuccessful and Craig managed to jump down roughly twelve feet to the third floor fire escape.

On the third floor an officer managed to break out a window and attempted to apprehend Craig. In the fracas, Craig received some minor superficial cuts from the broken glass. He then jumped to the second floor fire escape, evading a second attempt to spray him with pepper spray. Numerous officers had formed a perimeter at the bottom of the fire escape and they were moving closer to the building. Other officers were on the roof of the building. When negotiations failed, the Portland Fire Department was called and two police officers commenced climbing up a fire ladder to retrieve Craig. Once the ladder had been brought to the scene Craig became less belligerent and more compliant. He proceeded to back down the ladder to the ground level and then submitted to arrest. Craig told the officers that he believed that they were merely “picking on him” because of his race. Other than this conclusory assertion by Craig, there is absolutely no evidence of any racial animus or motive in this case.

The SRT assigned to the Portland Police Department is a heavily armed unit designed to react to situations of potential violence. Approximately ten officers form the team. They dress in flack suits and wear Kevlar helmets. Their weapons include machine guns, other automatic weapons, and sharp shooter rifles. There can be little doubt that the SRT presents a considerable display of force when arrayed against an unarmed individual.

After the incident at Fox Court, at approximately 2:00 a.m. on November 29, 2000, Craig was taken to the Portland Police Department where a police officer cleaned up his cuts. He was then interviewed by Special Agent Brent McSweyn of the Bureau of Alcohol, Tobacco and Firearms and by Detective Jeffrey Bearce of the Waterville Police Department. The entire interview was videotaped. Craig’s demeanor during the

interview was neither agitated nor disorientated. He received appropriate medical attention for the minor cuts on his face. His handcuffs were adjusted prior to the interview to relieve any pressure. Given Craig's criminal history, including convictions for assault on police officers, removal of the handcuffs was deemed too risky. In sum, although the circumstances of the arrest were dramatic, the interview itself was conducted under non-threatening circumstances. Neither of the interrogating officers displayed any anger or emotion toward Craig.

The videotape reveals that S/A McSweyn advised Craig of his Miranda rights and asked whether Craig understood. Craig responded by stating, "No, I'm not gonna talk to you if I don't want to. I don't have to answer the question if I don't want to, it's my constitutional right." S/A McSweyn then told Craig he was investigating the Waterville robbery and began to ask questions. Craig answered some of the agents' questions and asked some of his own questions of the agents. The interrogating officers made it more than plain to Craig that they could not promise him any leniency from either state or federal prosecutors if he should choose to cooperate. Craig made it equally plain that he understood they could not make him any favorable deals.<sup>1</sup> Craig is a seasoned veteran of the criminal justice system with numerous prior convictions. His conduct during the course of the interview displayed his knowledge of how the legal system works. Craig indicated he wanted to see the police reports to ascertain whether the co-defendants had made statements. Detective Bearce informed Craig that certain of his co-defendants had

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<sup>1</sup> On this point, the following dialogue occurred:

McSweyn: Um, when did you get here in Maine?

Craig: How's that gonna help you, how's that gonna help me?

McSweyn: Well, when?

Craig: I mean there's no DA present here, I mean, you can't promise me anything as part of [inaudible].

made incriminating statements under oath at a detention hearing that same day. The evidence presented at the hearing was inconclusive on whether Craig's co-defendants actually made these statements,<sup>2</sup> although at least one of them had implicated Craig when confessing to the police. Craig also initiated a discussion about whether the charges against him would be brought federally or on the state level. The only cause for concern in this case arises out of the following response by Detective Bearce:

Bearce: . . . . I can make you no promises whatsoever.

Craig: I know you can't.

Bearce: . . . . The difference is gonna be whether you want to cooperate, tell me what and why. Why is the main reason, cut the best deal you can. That would be your best option. Or, if you want to play the hardass, then it's gonna be a bad thing cause I'll be honest with ya, I been doing this since like fucking Monday morning and I'm ready to go home and go to bed, and I'm just as happy to walk off and let Brent handle it cause you can't cut deals with the feds. . . .

(Interrogation Transcript, Docket No. 46, Exhibit 1, at 12.) Although the interrogation transcript and videotape reveal that no promises were made of *leniency*, Detective Bearce essentially threatened Craig that the case would be prosecuted federally if Craig refused to cooperate. (Docket No. 46, Exhibit 1, at 12.)

### ***Discussion***

In order for Craig's statements to the police to be admissible, the government must establish by a preponderance of the evidence that Craig "voluntarily, knowingly and intelligently" waived his right to remain silent and to speak with counsel. Lego v. Twomey, 404 U.S. 477, 484-86 (1972) (establishing preponderance standard); Miranda

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<sup>2</sup> As revealed by the videotape of the interrogation and the transcript attached to the government's response, docket number 46, Detective Bearce made this statement. The government did not call Detective Bearce to testify in the suppression hearing, relying instead on the testimony of S/A McSweyn, who did not have any knowledge of whether Craig's co-defendants had actually made these statements.

v. Arizona, 384 U.S. 436, 444 (1966) (“The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.”). The voluntariness of a waiver depends on the totality of the circumstances. Arizona v. Fulminante, 499 U.S. 279, 286 (1991). They must demonstrate that the defendant’s will was not overborne and that his decision to speak was freely and voluntarily made. Bryant v. Vose, 785 F.2d 364, 367-68 (1st Cir. 1986). Relevant considerations include “both the characteristics of the accused and the details of the interrogation.” Schneekloth v. Bustamonte, 412 U.S. 218, 226 (1973) (discussing voluntariness standard in the context of a consent to search).

Craig recognizes that the government need not prove that he expressly waived his Fifth Amendment rights in order for the waiver to be valid. North Carolina v. Butler, 441 U.S. 369, 373 (1979); Bui v. Dipaolo, 170 F.3d 232, 240 (1st Cir. 1999) (recognizing the doctrine of implied waiver depends upon the circumstances of the case and may be applicable when a defendant chooses to selectively respond to questions posed to him). Thus, Craig contends that the “totality of the circumstances” cannot support an inference of waiver. Craig concedes, as indeed he must based upon the evidence presented, that he knew and understood his rights. Craig argues that the threat of a federal prosecution and misleading statements concerning the testimony of his co-defendants during a detention hearing, when coupled with his location at the time of the interview, his physical and mental state following the dramatic arrest events, and his fears of simply being convicted because he was black created a totality of circumstances which rendered his statements involuntary. Craig places special emphasis on the fact that, unless he answered their questions, his case would be turned over to federal prosecutors and he would receive a

sentence two to three times longer than a state court would impose. (Craig’s Motion to Suppress, Docket No. 32, at 2.)

To begin, based on my proposed finding that Craig was calm and coherent during the interrogation, I discount any suggestion that the harrowing nature of his apprehension prevented him from providing a voluntary confession. Additionally, there was nothing unusual about the interrogation room or the interrogators’ physical conduct that would create a cause for concern. Finally, neither the arresting officers nor the interrogating officers behaved in a racist manner. This leaves only those representations that the interrogating officers made to Craig concerning federal/state prosecution and his co-defendants’ statements against him.

*1. Trickery and deceit*

Detective Bearce’s representations concerning the co-defendants’ implication of Craig raises little, if any, cause for concern. Even assuming that Bearce’s representations were false,<sup>3</sup> the First Circuit has indicated that police trickery and deceit are, in general, lawful tools of the interrogator’s trade. United States v. Byram, 145 F.3d 405, 408 (1st Cir. 1998); see also Frazier v. Cupp, 394 U.S. 731, 739 (1969). I am not persuaded that this representation was sufficient to overbear Craig’s will. Undoubtedly, the representation played some causative role in Craig’s decision to speak; it appears from the transcript that his concern over his co-defendants’ implication of him motivated Craig to offer his own version of the robbery. But this information merely provided Craig with “food for thought.” It did not prevent him from engaging in a deliberative process concerning whether the waiver of his rights might lead to any personal advantage.

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<sup>3</sup> Bearce did not testify at the hearing. The government has offered his affidavit in a post-hearing, supplemental response to Craig’s motion. (Docket No. 56.) The affidavit indicates that Bearce did not deceive Craig concerning his co-defendants’ statements.

## 2. *Threats and promises*

In Bram v. United States, 168 U.S. 532 (1897), the Supreme Court penned its first opinion concerning the federal government's use of confessions obtained during custodial interrogation by methods that "engender in the mind of the accused hope or fear in respect to the crime charged." Id. at 549. The oft-quoted standard set forth by the Court stated:

A confession, in order to be admissible, must be free and voluntary: that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however, slight, nor by the exertion of any improper influence.

Id. at 542-43 (citation and quotation marks omitted). Over the course of the Twentieth Century, this potent prohibition against the use of statements obtained through promises or threats has been significantly diluted. At one time considered by many courts to require the suppression of a confession as a matter of law, the use of threats or promises by interrogating officers has come to be treated as one of the many factors to be considered when judging the voluntariness of a confession based on the "totality of the circumstances." See United States v. Pinto, 671 F. Supp. 41, 46-50 (D. Me. 1987) (describing this legal development). It might be said that the modern focus is not on whether promises or threats were made, but on whether a defendant's confession was "extracted" thereby.

Detective Bearce's statement to Craig that he would leave Craig to S/A McSweyn if Craig did not start talking, and that Craig would not be able to cut any deals with the "feds," amounted to a clear and distinct threat that Craig's silence would, as opposed to could, lead to federal prosecution. Still, this threat was not so daunting as to render any of Craig's subsequent statements involuntary. In fact, rather than compelling Craig to



confess to his involvement in the robbery, this comment only spurred an additional question from Craig concerning whether the decision to prosecute the case under federal or state jurisdiction would “carry with everybody, or just with me?” The interrogating officers informed Craig that the decision would apply to everyone involved and that the decision would “be made down the road” (Interrogation Transcript at 12).

Craig’s question and the officers’ response, in my view, highlights the fact that Craig was not compelled to speak out of an overriding fear that his silence would be the sole determinant of whether he would be federally prosecuted. Craig understood that Bearce was bluffing to suggest that only his silence or cooperation would resolve the question. Craig knew that he did not need to answer any of the officers’ questions. Craig knew that the officers lacked the authority to bind the prosecutors in his case. Craig was in all regards experienced in police interrogation and understood that his interrogators sought statements in order to further incriminate him. Craig was no more inclined to wilt in the heat of custodial interrogation than he was in the face of the Special Reaction Team’s show of force. Ultimately, Craig decided to provide a statement concerning the robbery because he believed it was in his best interest to do so. Although the wisdom of his decision to forego his right to remain silent is open to question, the decision was nevertheless his own voluntary act.

### ***Conclusion***

Based on the totality of the circumstances, including Craig’s experience with police investigations, his relaxed demeanor, his back and forth discussion with the interrogating officers, and his clear understanding of his constitutional right to remain silent, my conclusion is that Craig voluntarily waived his rights by discussing his

involvement in the Budget Host Hotel robbery. The interrogation conducted by Detective Bearce and S/A McSweyn did not overbear Craig's will and force him to relinquish rights he otherwise would have asserted. Therefore, I recommend that the Court **DENY** Craig's motion to suppress.

#### NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten days of being served with a copy thereof. A responsive memorandum shall be filed within ten days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated: July 6, 2001

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Margaret J. Kravchuk  
U.S. Magistrate Judge

#### TRIAL

U.S. District Court

District of Maine (Bangor)

CRIMINAL DOCKET FOR CASE #: 01-CR-3-ALL

USA v. MOONEY

Filed: 01/09/01

Other Dkt # 1:00-m -00066

Case Assigned to: Judge GEORGE Z. SINGAL

DENNIS J MOONEY (1)                      JEFFREY M. SILVERSTEIN, ESQ.

aka    [COR LD NTC cja]

MICHAEL MANN                              BILLINGS & SILVERSTEIN

aka    47 MAIN STREET

KEVIN BERNIER                              P.O. BOX 1445

defendant                                      BANGOR, ME 04402-1445

(207) 941-2356

Pending Counts:                      Disposition

18:1951.F HOBBS ACT ROBBERY

(1s)

18:924C.F USE OF FIREARM IN A CRIME OF VIOLENCE

(2s)

26:5861D.F POSSESSION OF UNREGISTERED SAWED-OFF SHOTGUN

(3s)

18:922G.F FELON IN POSSESSION OF FIREARM

(4s)

Offense Level (opening): 4

Terminated Counts:                      Disposition

18:1951.F HOBBS ACT ROBBERY -INTERFERENCE WITH COMMERCE BY  
THREAT OR VIOLENCE

(1)

18:924C.F USE OF FIREARM IN CRIME OF VIOLENCE

(2)

26:5861D.F POSSESSION OF SAWED-OFF SHOTGUN

(3)

18:922G.F FELON IN POSSESSION OF FIREARM

(4)

Offense Level (disposition): 4

Complaints                                      Disposition

COUNT 1-ALL-Possession of Sawed-Off Shotgun in violation of 26:5861(d) and 18:2; COUNT  
2-ALL-Hobbs Act Robbery in violation of 18:1951(a) and 2; COUNT 3-CRAIG-Felon in  
Possession of Shotgun/Armed Career Criminal in violation of 18:922(g)(1) and 924(e); COUNT  
4-MOONEY-Felon in Possession of Shotgun in violation of 18:922(g)(1) and 2; COUNT  
5-RODERICK -Felon in Possession of Shotgun/Armed Career Criminal in violation of  
18:922(g)(1) and 924(e) and 2 [ 1:00-m -66 ]

MANUEL A RODERICK (2)                      GREGG D. BERNSTEIN, ESQ.

defendant

[COR LD NTC cja]

LIPMAN & KATZ

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Pending Counts:                      Disposition

18:1951.F HOBBS ACT ROBBERY

(1s)

18:924C.F USE OF FIREARM IN A CRIME OF VIOLENCE

(2s)

26:5861D.F POSSESSION OF UNREGISTERED SAWED-OFF SHOTGUN

(3s)

18:922G.F FELON IN POSSESSION OF FIREARM

(5s)

Offense Level (opening): 4

Terminated Counts:                      Disposition

18:1951.F HOBBS ACT ROBBERY - INTERFERENCE WITH COMMERCE BY  
THREAT OR VIOLENCE

(1)

18:924C.F USE OF FIREARM IN CRIME OF VIOLENCE

(2)

26:5861D.F POSSESSION OF SAWED-OFF SHOTGUN

(3)

18:922G.F FELON IN POSSESSION OF FIREARM (in violation of  
18:922(g)(1) and 2)

(5)

Offense Level (disposition): 4

Complaints                                  Disposition

COUNT 1-ALL-Possession of Sawed-Off Shotgun in violation of 26:5861(d) and 18:2; COUNT  
2-ALL-Hobbs Act Robbery in violation of 18:1951(a) and 2; COUNT 3-CRAIG-Felon in  
Possession of Shotgun/Armed Career Criminal in violation of 18:922(g)(1) and 924(e); COUNT  
4-MOONEY-Felon in Possession of Shotgun in violation of 18:922(g)(1) and 2; COUNT  
5-RODERICK -Felon in Possession of Shotgun/Armed Career Criminal in violation of  
18:922(g)(1) and 924(e) and 2 [ 1:00-m -66 ]

MARQUIS A CRAIG (3)                      TERENCE M. HARRIGAN, ESQ.

defendant

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Pending Counts:                      Disposition

18:1951.F HOBBS ACT ROBBERY

(1)

18:924C.F USE OF FIREARM IN A CRIME OF VIOLENCE

(2)

26:5861D.F POSSESSION OF UNREGISTERED SAWED-OFF SHOTGUN

(3)

18:922G.F FELON IN POSSESSION OF FIREARM

(6)

Offense Level (opening): 4

Terminated Counts:

NONE

Complaints                              Disposition

COUNT 1-ALL-Possession of Sawed-Off Shotgun in violation of 26:5861(d) and 18:2; COUNT

2-ALL-Hobbs Act Robbery in violation of 18:1951(a) and 2; COUNT 3-CRAIG-Felon in

Possession of Shotgun/Armed Career Criminal in violation of 18:922(g)(1) and 924(e); COUNT

4-MOONEY-Felon in Possession of Shotgun in violation of 18:922(g)(1) and 2; COUNT

5-RODERICK-Felon in Possession of Shotgun/Armed Career Criminal in violation of

18:922(g)(1) and 924(e) and 2

[ 1:00-m -66 ]

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